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ABSTRACT

The purpose of this study was to help public school administrators, especially principals, to understand the legal and constitutional limitations of their authority in dealing with students. Control of students is discussed as five separate topics, each representing a chapter, as follows: (1) freedom of expression and First Amendment rights; (2) the constitutionality of dress and hair style codes; (3) due process and suspension and expulsion; (4) the constitutionality of searches and seizures; and (5) the rights of the married or pregnant student. Two student rights cases--Tinker v. Des Moines Independent Community School District and Goss v. Lopez--are discussed in detail. The study concludes that public school administrators must respect the civil rights of all students as specified in the Constitution. (Author/ID)

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AN ADMINISTRATOR'S LEGAL GUIDE TO STULENT CONTROL

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CHAPTER I

INTRODUCTION

During the past decade, the public school administrator has had to defend almost every conceivable type of student control rule or regulation in a court of law. In fact, the student control issue has come under strict examination by both the state and federal courts in recent years. The era of the principal's control over a student and his or her activity during school hours has come to an end because of the public's increasing concern with the legality of such action.

The rise in legal action against school authorities concerning student control matters has grown in the last ten years. Because of this, the school administrator must maintain constant surveillance of school related court decisions in order to stay within proper legal limits when dealing with students. This duty is compounded by the fact that courts have held certain administrative actions legal in some sections of the country while other administrative actions have been held illegal and unconstitutional in others.

Purpose of Study

It is this writer's opinion that school officials might have a sound legal basis to take some action against a student, but might fail to do so because of legal ignorance. Or, the school principal might take some action against a student which the courts have already declared illegal and unconstitutional. There might also be times when the principal would have a legal basis for his action, but would not follow accepted procedure set down by the courts and thereby violate the law.

The main purpose of this study is to help the public school administrator understand some of his legal alternatives when dealing with students. This study is meant to aid the principal in identifying his prerogatives in an effort to help him or her to make a proper legal decision regarding the action which is about to be taken. More specifically, this study is meant to offer a practical aid to principals and assistant principals in informing them of legal and constitutional ramifications of student control.

Delimitations and Organization of the Study

In order to contain this study within reasonable limits, this author has chosen to examine the student rights issue only in terms of the principal's (or assistant principal's) role in maintaining student control. This action is necessary because the principal is ultimately responsible for students' actions while under the supervision of the school.[1] Therefore, the study should be directed to that official. It was also necessary to limit the study to public schools only because several United States Federal Courts have ruled that when a student enrolls in a private institution, the student is no longer under the protection of the Federal Constitution as far as school related matters are concerned.[2]

The study will also be chiefly concerned with the decisions of United States Courts rather than those of the state courts. The reason for this is that a decision handed down by state courts only affects those states where the court has specific jurisdiction. Federal courts, in contrast, have a much broader base of authority. This is not to say that decisions of state courts will not be used at all, for in many instances federal courts have used significant state court decisions as guidelines for their own opinions, but rather that this study will primarily concentrate on the decisions of federal courts.

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[1] Richard S. Vacca, "The Principal as Disciplinarian: Some Thoughts and Suggestions," High School Journal (1971) pgs. 405-410.

[2] Green v. Howard University, 271 F.Supp.609(1967): affirmed at 412 F.2d.1128(U.S.C.A. District of Columbia,1969), Robinson v. Davis, 447 F.2d.753 (Fourth Circuit Court of Appeals, 1971), and Powe v. Miles, 297 F.Supp.1269(U.S.D.C.New York, 1968): affirmed at 407 F.2d.73(Second Circuit Court of Appeals,1969).

The court decisions which have been researched are taken primarily from the past ten years. The purpose behind this is because of the highly complex and fluid nature of our courts. Many decisions of fifty or sixty years ago have been overturned in the last decade Therefore, decisions taken from the last ten years will provide the most up-to-date information regarding a particular issue.

In order to simplify the complexities of student related legal problems, it has been necessary to limit this study to certain specific issues. To do so, this study is divided into chapters each of which includes the exploration of one specific issue.

For the purpose of this study, student control is expressed in terms of five distinctive categories. These are as follows:

1) Freedom of Expression: First Amendment Rights
2) The Constitutionality of Dress and Hair Style Codes
3) Due Process and Suspension and Expulsion
4) The Constitutionality of Searches and Seizures
5) The Rights of the Married or Pregnant Student

Realizing that the student related legal issues contained in each of these categories are still being challenged in the courts, and, in an effort to retain a high degree of relevancy for public school principals, this author has decided to devote one full chapter to each of the above categories.

Chapter II will deal with the students' First Amendment rights and how they effect freedom of expression in public schools. The chapter will enumerate the legal prerogatives available to principals in dealing with potentially disruptive situations.

Chapter III, while initially appearing to be an extension of Chapter II, represents, in fact, a separate area of legal activity. Even though the basic motivation for unusual dress by students is claimed to be "expression", the courts in this country have dealt with this issue in many diverse and non-uniform ways. Therefore, a state-by-state breakdown of this controversy is needed in order to fully inform the school administrator of the exact legal status of this issue.

Chapter IV will delve into the concept of due process (substantive and procedural) for juveniles while they are students in public schools. Also, the chapter will explore the legal notion of how due process effects student suspensions and expulsions from public schools.

Chapter V is also concerned with the legal notion of the due process rights of the students, but on a level different from that of Chapter IV. Search and seizure by school principals can sometimes lead to criminal charges being placed on the students. Therefore, the public school principal must be well informed as to the exact procedures to follow when forced with such problems. Moreover, the principal must be aware of the court imposed legal perameter of in loco parentis in such situations.

Chapter VI contains an examination of the civil rights of the married and/or pregnant student. In the treatment of the material, major questions regarding the rights of pregnant, unmarried females will be addressed.

A summary chapter will conclude the study. In this chapter, the writer will suggest guidelines of action for public school principals concerning the rights of students while they are in public schools. A discussion on the geographical boundaries of the United States Circuit Court of Appeals, and a reprinting of the famed Tinker and Lopez decisions are contained in a series of Appendices.

Methods and Procedures

The research methods employed in gathering data for this study were, in essence, quite simple. This author reviewed all the pertinent literature concerning the issues of this study. The literature led to an indepth review of court cases which spoke to the particular issue in question.

A thorough examination of the various law reviews and West's General Digest (4th. Series) also helped to reveal many other cases which were concerned with the student problem.

Summary

During the last decade, there appears to have been a substantial increase in court cases involving the student rights issue. Because of this, it is imperative that the public school administrator be constantly well-informed as to the legal and constitutional limitations of his or her authority in dealing with students. Therefore, a study outlining these legal limits is needed by the public school principal.

CHAPTER II

STUDENTS IN PUBLIC SCHOOLS: FIRST AMENDMENT RIGHTS

Since 1960, there have been several court cases involving the issue of students' rights to freedom of expression while in the public schools. These decisions have been based on the First Amendment Rights guaranteed by the Federal Constitution as applied to the states through the Fourteenth Amendment. Since the whole question of freedom of expression is directly related to the First Amendment, a short look at this section would be in order.

The First Amendment to the Constitution reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.[3]

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[3] First Amendment to the United States Constitution, adopted 1791.

This Amendment is made applicable to the states through the Fourteenth Amendment. Since public school systems are functions of the states, they must abide by the stipulations of the First Amendment.

In public schools, administrators must ask, therefore, if they are in any way prohibited from controlling student speech. The answer to this question is yes, but only under certain conditions. The most obvious condition being to curb any disruption of the operation of the school as the following court opinions illustrate.

Burnside v. Byars

The first court to speak directly to the disruption issue was a Fifth Circuit Court in 1966. In Burnside v. Byars, the Court ruled on the question of freedom buttons being worn by students in school.[4] In their decision, the justices stated that students, being citizens, are also entitled to the protection of the First Amendment as long as the exercising of these rights "do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school".[5] However, said the Court,

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[4] 363 F.2d.744(1966).

[5] Supra, note 4.

> ...with all of this in mind, we must also emphasize that school officials cannot ignore expressions of feeling with which they do not wish to contend. They cannot infringe on their students' right to free and unrestricted expressions as guaranteed to them under the First Amendment to the Constitution, where the exercise of such rights in the school buildings and schoolrooms do not materially and substantially interfere with the requirement of appropriate discipline in the operation of the school.[6]

Little did the justices realize that they had set the test for each subsequent case involving infringement of First Amendment rights.

Subsequent courts, following Burnside, weighed the issue of infringement of personal rights against the concept of whether the exercising of such rights would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school".[7] In 1969, a black armband case found its way to the United States Supreme Court where this phrase would have a meaningful and significant impact on the constitutionality of infringement of First Amendment rights while students are in the public schools.

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[6] Supra, note 4.

[7] Supra, note 4.

Tinker v. Des Moines: A Landmark Established

On February 29, 1969, the United States Supreme Court handed down its decision in Tinker v. Des Moines Independent Community School District.[8] The Tinker decision had its beginnings in Des Moines, Iowa, in 1965, where a group of parents met and decided to wear black armbands to support a truce in the Viet Nam war during the holiday season. Their three children, John Tinker (15), Mary Tinker (13), and Christopher Ecthardt (16), also decided to wear the armbands to school.

Several days before the armbands were to be worn, John Tinker mentioned the students' plan to his journalism teacher. She, in turn, informed the principal who called a special meeting of all the principals in the school district. At this meeting, the principals drafted a new regulation, prohibiting the wearing of armbands on school property, and, stated that any student found wearing one would be sent home until it was removed. Two days after the adoption of this new regulation, the three students wore black armbands to school and were sent home. They did not return to school until after the holiday season.

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[8] 393 U.S.503(1969).

The Tinker parents filed a complaint in the United States District Court and asked for an injunction restraining the school principals from enforcing the new regulation.

Following an evidentiary hearing, the Court dismissed the complaint by upholding the constitutionality of the principals actions, saying, in part, "that it was reasonable in order to prevent disturbance of school discipline."[9] In their decision, the District Court refused to follow the decision of a similar case brought to the Fifth Circuit Court, where the Court ruled that school officials could not restrict the wearing of armbands unless the armband "materially and substantially interfere(s) with the requirements of appropriate discipline in the operation of the school."[10]

Following the District Court decision, the Tinker parents appealed the case to the Eight Circuit Court of Appeals where that Court was equally divided. Therefore, the appellate Court sustained the lower Court decision. Ultimately, in 1969, the case went to the United States Supreme Court.

The United States Supreme Court in Tinker

Mr. Justice Fortas delivered the opinion for the nation's highest court. The high Court ruled in favor of the plaintiffs, thus reversing the lower courts' decision.

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[9] Supra, note 8.

[10] Supra, note 4.

In his opinion, Mr. Fortas meticulously outlined the rights of students and said, "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.[11] Justice Fortas then warned public school systems and public school administrators when he wrote

> In our system, state-operated schools may not be enclaves of totalitariansim. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.[12]

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[11] Supra, note 8.

[12] Supra, note 8.

However. Mr. Fortas did state emphatically that students may exercise these rights only so long as their expression does not "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."[13]

In the dissenting opinion, Mr. Justice Black offered the following points as reasons why the decision should have held for the school officials:

1) the Court arrogated to itself rather than to the state's elected school officials the decision as to whether the disciplinary regulations are "reasonable".

2) the case's decision subjected schools to the whims of the "loudest mouthed" (and not necessarily smartest) students. Students are in school to learn - not to teach.

3) The Supreme Court should have given the Iowa Court the right to determine what free expressions should be allowed and what should not.[14]

For a reprinting of this famed decision, see Appendix A.

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[13] Supra. note 8. Herein, Mr. Justice Fortas was quoting directly from Burnside v. Byars - see note 5.

[14] Supra. note 8.

In a later and different court decision, Massie v. Henry, the Fourth Circuit Court of Appeals held that just because some students are becoming disruptive because of other students' expression of their views, the school principal cannot prohibit the expression of these views. The Court considered this to be a revocation of an individual's rights because of the deportment of others.

Post-Tinker Rulings

Since "Tinker" many other types of First Amendment cases have come to the lower courts. Tinker, being specifically a black armband case, held that such armbands were a legitimate means of self-expression.

In 1971, the Fifth Circuit Court of Appeals was asked to rule in another "armband" case. In Britts v. Dallas Independent School District, it was held that school officials failed to show sufficient grounds of disruption to justify an infringement of students' First Amendment rights.[15] Once again, the use of armbands by students was protected by the Constitution of the United States. School officials in this case also found that the burden of proof was upon them for showing sufficient disruption grounds for infringing on students' Constitutional rights.

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[15] 436 F.2d.728(1971).

In 1970, the Sixth Circuit Court of Appeals in Guzick v. Drebus, ruled in favor of public school authorities who had prohibited students from wearing anti-war protest buttons to school.[16] The Court justified its decision by citing numerous instances of violent disruption in the 70% black - 30% white high school, resulting directly from the expression of students. Therefore, this Court felt that school officials had proven "materially and substantially" that the operation of the school would be significantly affected if students were allowed to wear such buttons to school. Once again, however, the burden of proof was on the school authorities and not on the students.

Student Newspaper as Expression

Armbands and buttons are not the only means by which students express themselves in public schools, school newspapers are also a popular medium. In recent years, there have been two major "newspaper" cases decided by United States Circuit Courts of Appeals. Before citing the details of these cases, let us look at the source of the problem.

Often times, the school principal might find it necessary to check a high school newspaper before it goes to the printer. Reasons often given for this procedure are 1) to make sure there is nothing libelous said about other students, 2) to make sure nothing derogatory is said about the school or its personnel, and 3) to make sure that nothing too controversial or obscene is contained within.

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[16] 431 F.2d.597(1970).

In 1971, the Second Circuit Court of Appeals decided Eisner v. Stamford Board of Education.[17] In this case some high school students asked the Court to rule on the constitutionality of a regulation which required all printed material to be submitted, in advance to the school principal. The Court stated that school officials had the right of such prior approval if

1) a strict formal procedure is to be followed in the assessment with a specific period of time allowed for approval.
2) officials should try to forestall disruptions before banishing unpopular views from school grounds.
3) officials should list what types of disruptive actions (and to what degree) is needed before censorship is used.[18]

In essence, the Second Circuit Court of Appeals set up a screening procedure which school authorities must follow if prior approval of student publications is required.

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[17] 440 F.2d.803(1971).

[18] Supra. note 16.

The Fifth Circuit Court of Appeals also ruled on a "newspaper" case in 1972. In Shanley v. Northeast Independent School District, Bexar County, Texas,[19] several students were suspended because they violated a school regulation by printing an underground newspaper off school property, with non-school materials, and then distributed it before and after school hours across the street from the school. The paper, according to the Court, was not obscene, libelous, or inflammatory. The Court immediately threw the burden of proof upon the school authorities, saying

> When the constitutionality of a school regulation is questioned, it is settled law that the burden of justifying the regulation falls upon the school board.[20]

The Court then spoke of the issue of disruption and said

> ...we must emphasize (in the context of this case) that even reasonably forecast disruption is not per se justification for prior restraint a subsequent punishment of expression afforded to students by the First Amendment.[21]

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[19] 462 F.2d.960(1972).

[20] Supra. note 19.

[21] Supra. note 19.

The Court did support the concept of a screening process so long as its purpose was to prevent disruption and not to stifle content. Said the Court,

> Schools may have regulations which require "materials destined for distribution to students be submitted to the school administration prior to distribution. As long as the regulation for prior approval does not operate to stifle the content - screening is to prevent disruption and not to stifle expressions - of any student publication in an unconstitutional manner and is not unreasonably complex or onerous, the requirement of prior approval would more closely approximate simply a regulation of speech and not a prior restraint.[22]

In summary, the Circuit Court of Appeals stated,

> Under the First Amendment and its decisional explication, we conclude that: 1) expressions by high school students can be prohibited altogether if it materially and substantially interferes with school activities or with the rights of other students or teachers, or if the school administration can demonstrate reasonable cause to believe that the expression would engender such material and substantial interference:

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[22] Supra. note 19.

> 2) expression by high school students cannot be prohibited solely because other students, teachers, administrators, or parents may disagree with its content;
>
> 3) efforts at expression by high school students may be subjected to prior screening under clear and reasonable regulations; and
>
> 4) expression by high school students may be limited in manner, place, or time by means of reasonable and equally applied regulations.[23]

The First Circuit Court of Appeals, in Riseman v. School Committee of the City of Quincy held that students could not be prohibited from distributing pamphlets in school unless there was a reasonable disruption basis as outlined in Tinker.[24]

In 1972, a United States District Court struck down a set of school censorship regulations as being too broad.[25] The regulations at issue were as follows:

> 1) prohibited distribution of literature likely to produce disruption.
>
> 2) prohibited distribution of literature while classes were in session.

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[23] Supra. note 19.

[24] 439 F.2d.148(1971).

[25] Jacobs v. Board of School Commissioners of City of Indianapolis 349 F.Supp.605(1972).

3) prohibited collecting money from students in supporting political causes.

4) prohibited distribution of literature not written by a student, teacher, or other school employees.

Anotner district court ruled against school officials in a censorship (obscenity case), Vought v. Van Buren Public Schools.[26] A student was expelled because he had been caught with several copies of an (obscene) underground newspaper which contained the word "Fuck". The Court held for the student since the Court was convinced that the word "Fuck" could be found in a current issue of Harpers magazine, contained in the school library as well as the book Catcher in the Rye (which was on the recommended reading list for eleventh graders).

In Dunn v. Tyler Independent School District and Tate v. Board of Education of Jonesboro, Arkansas Special School District, courts ruled that student suspensions were valid (except in specific instances where due process was violated) because students staged a "walk-out" even though school authorities did their best to compromise with the students concerning the issues at hand.[27]

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[26] 306 F.Supp.1388(1969).

[27] Dunn v. Tyler Independent School District 460 F.2d. 137(1972) and Tate v. Board of Education of Jonesboro, Arkansas Special School District 453 F.2d.975(1972).

Summary

An analysis of the various decisions and issued of this chapter reveals that school authorities must establish a compelling state interest for infringing upon the constitutional right of freedom of expression of their students. In a court of law school administrators must show beyond a doubt that the student act of expression, if unchecked, would result in actual and material disruption of their school.

A public school principal may only regulate dress or hair codes in situations wherein the safety, health, and welfare of the students is in jeopardy. Courts have held that student dress and hair styles are also means of personal expression protected by the Constitution.

School principals may not prohibit a student's free speech either in the classroom or in print (the school newspaper) or exercise prior censorship of material; nor may they prohibit student expression in the form of armbands, pins, or buttons, nor may they prohibit the distribution on campus of materials concerning controversial subject, unless it can be shown that the student acts of expression "materially and substantially interfere with the requirements of discipline in the operation of the school."[28]

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[28] Supra. note 4.

If a principal does find it necessary to screen written material before allowing its distribution in the school, the following are constitutional guidelines that are consistent with the Second Circuit Court of Appeals' decision in Eisner v. Stamford Board of Education.[29]

> 1) Be able to prove that the purpose for the screening is to prevent disruption and not to stifle expression.
>
> 2) The screening must be a formal procedure with a fixed deadline.
>
> 3) Any censorship resulted from the screening must be based on previously written requirements of what and how much disruption is to be expected before such censorship takes place.
>
> 4) Be able to prove, in a court of law, that disruption would have occured had censorship not taken place.

Indeed, the Tinker decision has legally established the constitutional rights of all students attending public schools. It behooves public school principals to remember the following advice given by our nation's highest Court, when it said

> ...in our system (of government), undifferentiated fear or apprehension of disturbance is not enough to overcome

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[29] Supra. note 17.

> the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk."[30]

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[30] Supra. note 8.

CHAPTER III

THE LEGALITY OF STUDENT DRESS AND HAIR STYLE CODES IN PUBLIC SCHOOLS: A CASE LAW ANALYSIS

In the last two decades, as community dress and hair styles have undergone several radical changes, student dress in public schools has also undergone radical changes. In order to curb the tide of overly "unusual" student appearance the use of dress codes and hair style codes became increasingly popular. As a result, over the last decade in particular, several cases have reached the courts wherein the judges have had to rule on the constitutionality of these student dress and hair codes.

The primary focus of this chapter is to examine this problem and how it relates to the school principal. During the researching of this chapter, this author became aware that there is no legal difference between a dress code and a hair style code. Wherever a dress code can be enforced a hair style code can be enforced, and wherever a dress code is held unconstitutional, so too is a hair style code held unconstitutional. Legally, there is no distinction between the two. The only exception to this rule is where students' health and safety are placed in jeopardy. Students must abide by all rules regulating dress if these rules are designed to protect the health and safety of the students. For example, a shop teacher may require students to wear shoes in the shop, and require students to keep their long hair up under a shop cap, because there could be serious injury if something fell on an unprotected foot or if long hair were caught in a machine. As this example demonstrates, courts of law give school officials the right to regulate student dress in instances where the health, welfare and safety of the student is being protected.

Tinker and Dress Codes

Since the Tinker case has already been discussed in Chapter II and the entire decision is reproduced in Appendix A., this writer will only attempt in the paragraphs that follow to draw appropriate relationships between Tinker (and the court applied Tinker-test), and the constitutionality of dress codes.

The Tinker decision opened the way to litigation on many other student-related issues involving First Amendment rights. Through subsequent court action since 1969, the use of buttons, pins, armbands, and newspapers by students have been established as modes of self-expression. However, the whole issue of the use of dress and hair styles as means of expression is still being debated in many courts throughout the Country.

Some public school principals have in several instances, urged courts to rule that student dress codes are constitutional. These principals have generally argued that an absence of such regulations in the schools has a deleterious effect on school discipline. Some lower courts have agreed that school should not be subjected to chaos as a result of discipline being removed. As such, these lower courts often see the Tinker decision as irrelevant.

Dress Codes: An Analysis of Federal Circuit Court Opinions

In Richardson v. Thurston, the First Circuit Court of Appeals held that regulations limiting the length of hair are invalid.[31] In Richardson, a male student was dismissed because of long hair. According to the Court, the particular hair style which a student wore was a personal right and liberty protected by the Due Process Clause of the Fourteenth Amendment, and could only be limited in cases of extreme disruptions caused by that hair style.

During the researching of this study, this writer failed to find any cases concerning the issue of dress codes which were ruled upon by the United States Court of Appeals for the Second Circuit. However, the Tinker decision is still valid in this Circuit because Tinker was handed down by the United States Supreme Court which is jurisdictionally superior to the circuit court.

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[31] 424 F.2d.1281(1970).

There have been several dress code cases ruled upon in the Third Circuit. However, this author has been unable to find any pattern or consistent reasoning on this issue from this Circuit. No standard policy can be obtained from this region.[32]

The Fourth Circuit Court of Appeals recently handed down a decision in Massie v. Henry.[33] In Massie, several students refused to abide by a dress code which was designed and approved by the students, parents, teachers, and administrators of Tuscola Senior High School. The students went to court asking that the regulations be ruled invalid.

In its dicta, the Court went so far as to state that because of the school dress code, even General Grant, General Lee, Jesus Christ, and all Presidents of the United States (Washington to Wilson) would not "have been permitted to attend Tuscola Senior High School".[34]

The Court reaffirmed the notion that long hair is indeed a means of personal expression and this expression is protected by the Constitution. Speaking directly to the issue of the long hair of one student possibly causing a disturbance through the reaction of another student, the court said

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[32] Dr. Edmund Reulter of Columbia Teachers' College substaniated this fact in a speech delivered in Miami, Florida on November 12, 1974 at a NOLPE conference.

[33] 455 F.2d.779(1972).

[34] Supra. note 33.

> In short, we are inclined to think that faculty leadership in promoting and enforcing an attitude of tolerance rather than one of suppression or decision would obviate the relatively minor disruptions which have occurred.[35]

Two major cases involving students' right of dress were decided by the Fifth Circuit Court of Appeals. In 1966, the Court ruled in favor of students in Burnside v. Byars (which was discussed earlier).[36] In 1969, the Court changed its stand in Ferrell v. Dallas Independent School District.[37]

In Ferrell, the Court accepted and reinforced the concept that long hair was a constitutionally protected means of self-expression, but upheld the authority of school officials to infringe on this student right if there was a compelling reason to do so.

In Ferrell, school officials had argued that the compelling reason for limiting student expression was a real and eminent danger of extreme disturbance of the educational process. The Court was convinced of this and therefore held for school officials.

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[35] Supra, note 33.

[36] Supra. note 4.

[37] 393 F.2d.697(1969).

The Sixth Circuit Court of Appeals followed the lead set by the Fifth in their decision in Jackson v. Dorrier. In Jackson, the disruption and distraction factors were too great to uphold the constitutional rights of students.[38]

The Seventh Circuit Court of Appeals heard two similar, companion cases in 1970. In Breen v. Kahl, the Court admitted that long hair "may" distract and disrupt school, but "may" is not a sufficient reason to infringe on a constitutional right.[39] And, in Crews v. Cloncs, school officials were unable to demonstrate that there were sufficient disruptions at the school; therefore, the Court held for the students.[40]

The Eighth Circuit Court of Appeals, in Bishop v. Colaw, held that long hair was an acceptable means of free expression. Therefore, school officials could not infringe upon that right unless a compelling interest could be shown.[41]

The Ninth Circuit Court of Appeals ruled just the opposite on a similar case, King v. Saddleback Junior College District.[42] The Court found that a school regulation concerning length of hair did not represent any "substantial constitutional right being infringed upon."[43]

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[38] 424 F.2d.213,400 U.S.850,81 S.Ct.55,27 L.Ed.2d.88 (1970).

[39] 398 U.S.937,90 S.Ct.1836,26 L.Ed.2d.268(1970).

[40] 432 F.2d.1259(1970).

[41] 450 F.2d.1069(1971).

[42] 455 F.2d.932(1971).

The Tenth Circuit Court has expressed an attitude that regards problems of students' dress and hair regulations as to inconsequential to take up the time of a United States Circuit Court of Appeal. As such, that court has, on several occassions, refused to rule on any of the cases.[44]

Summary

As the aforementioned discussion illustrates, because of the diversity of these decisions, states located in the First, Seventh, and Eighth Circuit Courts are prohibited from regulating dress and hair codes. States located in the Fifth, Sixth, and Ninth may regulate dress and hair. States located in the Second and Tenth have no precedents except Tinker to rely upon. States within the jurisdiction of the Third Circuit Court of Appeals will probably not know which direction to go since the Court has shown inconsistency in dealing with the problem of dress and hair styles.

The total issue of the constitutionality of dress and hair codes is still undecided and diverse in spite of the

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[43] Supra. note 42.

[44] Massie v. Henry 455 F.2d.779(1972), supra 788. Also see Freeman v. Flake 448 F.2d.258(10th.Cir.1971).

United States Supreme Court decision in Tinker v. Des Moines Independent Community School District.[45] However, through court action over the past ten years a more liberal view is being taken by the courts. As the cases analyzed reveal, more and more courts are accepting the notion that an individual student's dress is a means of personal expression. Therefore, courts are more reluctant to always support school officials in infringing upon these rights.

In most cases reviewed, where courts have upheld school regulations or dress and hair length regulations, school administrators clearly demonstrated a compelling reason to do so. An example of such a case is Ferrell v. Dallas Independent School District where in the principal of the school presented undisputable proof of impending disruptions by students should the hair regulation be struck down.[46]

Finally, school principals must realize that when a student's constitutional right is involved, the burden of proof will fall upon them for proving that the regulation is reasonable. Reasonableness will be established if there is a rational basis shown between the school rule and the protection of the operation of the school.

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[45] Supra. note 8.

[46] Supra. note 37.

CHAPTER IV

SUSPENSIONS AND EXPULSIONS: A CONSTITUTIONAL COLLISION

Every school administrator should be concerned about the legalities of student suspensions and expulsions. Constitutional collisions between school procedures and the Fourteenth Amendment are most frequent in this area. This factor, plus the growing number of cases involving suspension or expulsion which have found their way into federal court, make it imperative for public school principals to fully understand their legal and constitutional limitations, rights, and prerogatives.

Since these issues directly concern the Fourteenth Amendment to the United States Constitution, it is necessary to quote this Amendment at this point. The Fourteenth Amendment to the Constitution reads:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any State

> deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.[47]

Due Process

It is difficult to understand exactly what the term due process means as it is mandated by the Fourteenth Amendment. In its basic and purest sense, due process means "fair play". What is fair for one individual is fair for all others. The Federal Constitution in mentioning due process actually speaks to two different types. First, there is substantive due process, also there is procedural due process.

Substantive due process means that the particular rule or regulation must not conflict with the Constitution on a substantive level. That is to say, that there is a substantive basis (direct connection) between the reason for having the rule and the protection of the efficient running of an educational institution or the protection of the educational environment from disruption. The substance of the rule cannot be argued against. Most of the cases in Chapter II and

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[47] Fourteenth Amendment to the United States Constitution, adopted July, 1868.

III concerned First Amendment rights where the schools' rules did not meet substantive due process requirements. The substance of the rule or regulation and not the rule inforcement procedures, was challenged as being unconstitutional.[48]

The second type of due process is procedural due process. This differs from substantive due process in that the substance of the rule or regulation is not challenged. In litigation it is the procedure in carrying out the rule that is challenged. An example of this type of due process concerns the suspension or expulsion of students. Can it be said in some school situation, that the principal possessed a sound substantive right to suspend a student, but failed to adhere to procedural due process as required by the Fourteenth Amendment? Procedural due process does play a very important role when viewed in terms of suspensions and expulsions.[49]

Types of Suspensions and Expulsions

After researching the issue of suspensions and expulsions, this author became aware of the fact that there are basically, three types of suspensions and two types of expulsions.

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[48] 16 Am.J.2d.Const.L.549,2 Am.J.2d.Admin.L.353,also see Ballentine's Law Dictionary, Third Edition (New York: The Lawyers Cooperative Publishing Company,1969) p.1000.

[49] 16 Am.J.2d.Const.L.550,also see Ballentine's Law Dictionary Third Edition(New York: The Lawyers Co-operative Publishing Company,1969) p.1232.

There are short term suspensions (which cover a time period of not more than ten days), and long term suspensions (which are longer than ten days, and have a specified length of time. e.g. six weeks). The indefinite suspension is one that has no specified time limit. The indefinite suspension is frequently used by public school administrators as a preliminary step prior to requesting expulsion.[50]

Expulsion can be categorized into two groups. The first type of expulsion is the term, semester, or year expulsion. This is where a student is expelled for the remainder of a school term, semester, or year but may return to school at a preset date. The other type is the permanent expulsion. In this type a student is expelled from either a school or a school system permanently (by school board action), and may *never* return to school. This of course, is the most serious since it has a permanent and lasting effect on the students' educational opportunities.[51]

Suspensions and Expulsions: A Case Study

In researching the major suspension and expulsion cases over the last ten years, this writer came to the conclussion that most cases wherein such actions were challenged involved the issue of *procedural due process*. A smaller number of cases were argued on the basis that schools did not have a substantive right to the suspension or expulsion. Therefore courts have been placed in a position of judging the constitutionality of the procedure used by school principals in carrying out the suspension or expulsion decision.

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[50] *Cook v. Edwards* 341 F.Supp.307(1972), also see page 46, *supra* note 66.

[51] *Supra*. note 50

One suspension case has found its way to the United States Supreme Court. Since a decision of the Supreme Court supercedes all other courts' rulings, it would be wise to begin with that case.

The Lopez Case

On January 22, 1975, the Supreme Court of the United States handed down its decision in Goss v. Lopez.[52] By a five to four decision, the high Court held that school officials must provide some type of hearing for students who are suspended for less than ten days in order to fulfill the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution.

Lopez had its beginning in Columbus, Ohio, during February and March of 1971. At that time, there was widespread student unrest in the Columbus, Ohio, Public School System (hereafter referred to as CPSS). Six of the defendants were students at the Marion-Franklin High School.

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[52] 419 ~~S.Ct.~~ 565 (1975).
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Tyrone Washington, a student, was demonstrating in the school auditorium while a class was being conducted there. He was ordered to leave by the school principal, but refused to do so. The principal called the police who was attacked by another student while attempting to remove Tyrone Washington. Both students were immediately suspended for ten days. Apparently, the other four Marion-Franklin students were suspended for similar conduct. None of these students were given any kind of hearing.

Dwight Lopez and Betty Crome, students at Central High School and McGuffey Junior High School, respectively, were also suspended for a period of ten days. Lopez was suspended for his alleged participation in connection with a disturbance which resulted in some physical damage done to the school lunchroom. He denied that he had anything to do with the disturbance saying that he was an innocent bystander.

Betty Crome was demonstrating at a different high school than the one she was attending. She was arrested by the police but released before being formally charged. Before going to her school the next day, she was notified that she was suspended for ten days. There is no record how the principal of McGuffey Junior High School received information leading to Ms. Crome's suspension or on what information he based the suspension. In both cases, however, there was no hearing held to determine the facts underlying the suspensions.

The ninth student, Carl Smith, was suspended for ten days. There are no facts available surrounding this student's suspension.

The students filed a class action suit against CPSS asking for an order enjoining school officials to remove all references of the suspensions from the student file because the suspensions were unconstitutional since no prior hearing was held. A three-judge District Court heard their plea and held for the students saying that they were "suspended without hearing prior to suspensions or within a reasonable time thereafter".[53] The defendant administrators of CPSS appealed the decision to the United States Supreme Court.

The United States Supreme Court in Lopez

Mr. Justice White delivered the opinion of the Court. At the outset of the opinion, he immediately established the fact that due process, as guaranteed by the Fourteenth Amendment, was applicable to the case when he said,

> Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken

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[53] Supra. note 52. Mr. Justice White quoting from the District Court opinion.

> away for misconduct without adherence to the minimum procedures required by this clause.
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> . . . . . .
>
> It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.[54]

Since, in the majority's view, students are entitled to due process, then it was their task to decide on exactly how much due process is due students in public schools. Justice White established minimum due process requirements for students to be as the following:

> At the very minimum, ... students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.[55]

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[54] Supra. note 52.

[55] Supra. note 52.

Justice White then pointed to the fact that "The Due Process Clause will not shield him from suspensions properly imposed, but it deserves both his interest and the interest of the State if his suspension is in fact unwarranted."[56]

The majority then set out basic procedural due process guidelines for public school administrators, saying

> Students facing temporary suspension having interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of ten days or less, that the student be given oral or written notice of the charges against him and, if he denies them an explanation of the evidence the authorities have an opportunity to present his side of the story. The clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.[57]

In the Court's view these requirements did not impose extravagant procedures on school disciplinarians. In their words, "we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions."[58]

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[56] Supra. note 52.

[57] Supra. note 52.

[58] Supra. note 52.

The Court did not state, however, that students had the right to legal council in such a hearing. Rather, they were of the opinion that only in certain difficult cases, council may be permitted. Said the court,

> He (the disciplinarian) may then determine himself to summon the accuser, permit cross-examination and allow the student to present his own witnesses. In more difficult cases, he may permit counsel.[59]

Justice White, finalized the high Court's opinion by stating a very significant qualification of this decision. He held that the decision is relevant only to suspensions of ten days or less and that a more formal procedure may have to be used in longer suspensions. In the Courts' words,

> We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding ten days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.[60]

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[59] Supra. note 52.

[60] Supra. note 52.

Other Rulings

Even though the Lopez decision dictates the procedures for short-term suspensions, a short look at the decisions of prior courts may shed more light to the situation.

In 1972, the District Court of the District of Columbia handed down its decision in Mills v. Board of Education of District of Columbia.[61] This case concerned the procedural due process rights of students in the Washington, D. C. schools who were labelled as behavioral problems, mentally retarded, emotionally disturbed, or hyperactive and were removed from school. The students claimed they were being denied educational experience which was rightfully theirs. The District Court held for the students saying,

> Defendants shall not suspend a child from the public schools for disciplinary reasons for any period in excess of two days without affording him a hearing and without providing for his education during the period of any such suspension.[62]

The District Court, in Mills, outlined a meticulous, fourteen ~~fifteen~~ step procedure which should be followed before a suspension could be effected, and a twelve step appeal procedure if the suspension was confirmed by the hearing and then appealed by the student or parents.

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[61] 348 F.Supp.866(1972).

[62] Supra. note 61.

In 1973, in a First Amendment newspaper case, *Vail v. Board of Education of Portsmouth School District*, a U.S. District Court held that a school system may not suspend a student for any period more than five days without

1) giving written notice of charges to both the student and his/her parents detailing the nature of evidence against the student.

2) offering the student and/or parents a formal hearing given sufficient time to prepare a defense for such a hearing, and

3) arriving at a decision of the hearing based soley on the facts presented therein.[63]

Off-Campus Offenses: Suspension and Expulsion

A United States District Court ruled on an extra-curricular activities case in 1970, where three varsity athletes (who were juniors) were caught at a school dance with beer on their breaths.[64] The students admitted that they had been drinking off-campus, and that they were aware of (an unwritten) procedure causing them to be suspended from all athletics for a period of one year.

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[63] 354 F.Supp.592(1973)

[64] *Hasson v. Boothly* 318 F.Supp.1183(1970).

The students believed that the suspension would cause them excessive hardships, because all three had the opportunity of gaining athletic scholorships to college if they were able to participate in sports during their senior year.

In rendering a decision the Court said, 1) even though there was no written rule regulating beer and students' behavior, the students knew that drinking beer was wrong and they were aware of the possible repercussions of doing so; 2) athletic probation for one year is different than a suspension and, therefore, the due process clause does not apply; 3) the school officials were within their legal and constitutional limits in regulating a student's participation in extra-curricular activities.

In 1972, another District Court ruled just the opposite of Hasson, just cited. In Moran v. School District #7, Yellowstone County, a District Court held that school officials have no right to suspend a student from extra-curricular activities without due process, since extra-curricular activities were an integral part of the educational curricula. Said the Court,

> The present Montana Supreme Court has recognized the importance of extra-curricular activities as an integral part of the total education process. Courts have begun to recognize that extracurricular activities such as football are "generally recognized as a fundamental ingredient of the educa-

tional process" Halley v. Metropolitan County Board of Education of Nashville, etc., 293 F.Supp.485,493(D.C.1968). Thus, it is apparent that the right to attend school includes the right to participate in extra-curricular activities.[65]

In 1972, an expulsion case, Cook v. Edwards,[66] came before a United States District Court. In Cook, a female student was expelled by the school board after the student had come to school drunk. The student caused no disturbances, was a "B" student, and this incident was a first offense. It did, however, come out in the Court hearing that the student was experienceing some "home problems" which was probably the source of her problem.

The District Court was of the opinion that even though there was the appearance of procedural due process (the Court had it doubts though), a permanent expulsion was an extreme punishment for this girl's offense - especially since it was the first occurrence. Therefore, said the Court, the expulsion void and suggested that school officials be more understanding in their dealings with students.

Summary

Since the Supreme Court's decision in Lopez supercedes all lower court decisions, public school administrators are now required to furnish some type of informal hearing with the student before a suspension of ten days or less can be effected. Or, in extreme cases, as soon after the suspension as practicable.

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[65] 350 F.Supp.1180(1972).

[66] 341 F.Supp.307(1972),also see notes 50 and 51.

The hearing should take place before the suspension is to be put into effect, and should contain the following elements:[67]

1) The student should be told what rule or regulation she or he has violated.

2) The student should be presented with the evidence against him or her.

3) The student should be given an opportunity to present his or her side of the story.

4) If there is a substantial discrepance between the student's version and the accuser's, the principal should conduct some type of investigation to determine the facts before the suspension is conferred.

The student does not necessarily have the right to legal council unless there are complications in the matter.

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[67] The high Court did state that in certain cases where the presence of the offending student might pose an element of danger for the rest of the student body, the hearing may be held as soon after the suspension as possible. Supra. note 52.

The Court did mention that suspensions of longer than ten days would require a more formal hearing. This formal hearing would necessarily contain the following elements:

1) The student and parents should receive written notice of the charges and evidence against the student.

2) A formal hearing should be offered with enough time allowed for the student and/a council to gather evidence for a defense.

3) At the hearing, the student should have the right to legal council, to present a defense, and to confront all accusers.

4) The decision of the hearing should be based soley on the evidence presented at the hearing.

School principals should also be aware that indefinite suspensions are generally considered initial steps towards expulsion proceedings. And, it shall be remembered that expulsion procedures are usually dictated by local school board policy (which usually conforms to due process regulations), and by state board and state department policy, as well as by state statute. Therefore, the public school principal is much less apt to go astray of procedural due process if he is cognizant of these mandates. In any event, the requirements would be at least as formal as the formal hearing requirements for long term suspensions as outlined above. The public school principal should also remember that courts have also emphasized in decision and dicta, that only an extremely serious offense should result in a suspension.

The issue of suspending a student from extra-curricular activities without due process is still being debated in many courtrooms of this country. However, research reveals that courts often consider extra-curricular activities as an integral part of the educational program. In accepting this concept, the principal would be wise to use the same due process procedure for extra-curricular suspensions as he or she would for regular school suspensions.

Finally, courts have held that even if students commit an off-campus offense (such as drinking where a school rule exists prohibiting same), and in turn bring the effects of this offense to school with them, suspensions are legal as long as school officials abide by the due process procedures in ordering the suspension or expulsion.

School administrators must realize that students may not be punished for off-campus offenses which are totally unrelated to the operation of the school, or for off-campus offenses which are protected (in substance) by the Constitution and the school system has no compelling reason to infringe upon these rights. In such situations, the student is acting outside the legal jurisdiction of the school.

CHAPTER V

SEARCHES AND SEIZURES

Because of the rise in violence and drug traffic in the public schools in the last ten years, public school administrators have been forced to deal with the issue of searches and seizures. This issue is especially volatile for several reasons. First, the entire concept of searches and seizures collides with the doctrine of in loco parentis. Can it be said that the principal is acting "in the place of the parents" when he searches a student, discovers illegal possessions on the student, and then turns the student over to the police for legal or criminal action?

A second reason why this issue can create problems for the public school principal is that many times the result of a search of a student or a student's locker can result in criminal charges being placed upon the student. Many people tend to question whether or not a public school principal should become involved in such a situation.

And third, there is substantial argument that in participating in searches and seizures, the public school administrator is actually acting as an agent of a governmental law enforcement agency or doing the duties of such an agent. There is a question regarding the role of the public school administrator in such actions.

Since the United States Constitution speaks directly to the issue of searches and seizures, it would be appropriate to examine that section of the Bill of Rights. The Fourth Amendment to the Constitution reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[68]

This Amendment protects citizens from being unreasonably searched. However, the application of the Fourth Amendment in public school situations is not absolute. This leaves the public school principal some authority to conduct legal searches and seizures if the proper procedure is followed.[69]

In Loco Parentis

Before delving into the major issues of this chapter, a short discussion of the *in loco parentis* doctrine would be in order. The public school principal should understand what it means and how he or she can be affected by its legal connotations. In loco parentis means that the principal is to stand "in the place of the parents" while the child is under the supervision of the school.[70]

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[68] Fourth Amendment to the United States Constitution, adopted 1791.

[69] People v. Stewart 313 N.Y.S.2d.253(1970), also see note 76 at page 57.

There are two different schools of thought regarding the in loco parentis doctrine.[71] . One believes that in loco parentis no longer applies to contemporary public school (since children have both parents and the law to protect them while in school). The other believes that the in loco parentis doctrine is still in tact in public schools, and must remain so because it is the only legal basis which the public school principal has in dealing with the students.[72]

The Courts and In Loco Parentis

Two courts have addressed themselves specifically to cases wherein the application of in loco parentis was an issue. In 1967, a New York Court of Appeals, while ruling on a search and seizure case, stated that parents have the right to expect that school authorities will stand in loco parentis of their children when at school. Said the Court,

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[70] See Black's Law Dictionary, 4th Edition, (St. Paul, Minn.: West Publishing Co., 1968) p.896; also see Wetherly v. Dixon 19 Ves.412, Brinkerhoff v. Merselis 24 N.J.L. 683, Howard v. United States, D.C.,Ky. 2 F.2d.170,174, Meisner v. United States, D.C.Mo. 295 F.2d.866,868.

[71] One side represented by the People v. Overton decision (229 N.E.2d.596,20 N.Y.2d.360,1967). The other side represented by the Johnson v. Horace Mann Mutual Insurance Company decision (241 So.2d.588,1970).

[72] Supra. note 71.

> ...school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each others. Parents, who surrender their children to this type of environment, in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards.[73]

This particular decision supports the in loco parentis concept. However, the courts, themselves, are not consistent in their rulings regarding in loco parentis.

In 1970, a Louisiana Court ruled on a corporal punishment case. In doing so, the court spoke directly to the issue, and defined "school personnel as parents." Speaking to "delegation of parental authority to school personnel," the Court said,

> In connection with the statutory authorization of teachers to hold

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[73] People v. Overton 229 N.E.2d.596,20 N.Y.2d.360(1967).

pupils to a strict accountability for disorderly conduct, the defendants refer to Civil Code Article 218 which confirms that the father and mother have a right to correct the child, "provided it be done in a reasonable manner." Reasoning that teachers stand "in loco parentis" by virtue of C.C. 220, defendants conclude that teachers are authorized to use corporal punishment. However, C.C. 220 states only:

"Fathers and Mothers may, during their life, delegate apart of their authority to teachers, schoolmasters and others to whom they entrust their children for their education, such as the power of restraint and correction, so far as may be necessary to answer the purposes for which they employ them" C.C. 220 does not say that fathers and mothers do delegate the power of restraint and correction to teachers, but that fathers and mothers may delegate such power. It might have been said, in days when schooling was a voluntary matter, that there was an implied delegation of such authority from the parent to the school and teacher selected by the parent. Such a voluntary educational system, like a system of apprenticeship . . . has long since disappeared. Parents no longer have the power to choose either

> the public school or the teacher in the public school. Without such power to choose, it can hardly be said that parents intend to delegate that authority to administer corporal punishment by the mere act of sending their child to school.[74]

It can be inferred from this decision, that there is justification for holding that in loco parentis is an obsolete concept. However, school principals should be aware that, to the best of this writer's knowledge, only one court has expressed this philosophy thus far. If the principal wishes protection from future legal complications, it would be wise to remember the following:

> Elementary school personnel should consider themselves in loco parentis at all times when the child is under the authority of the school. The welfare and well being of the student must come first.
>
> Middle or Junior High School personnel should also consider themselves bound by the in loco parentis doctrine because the students of this educational level are still juveniles and, therefore, adults supervising them are responsible.

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[74] Johnson v. Horace Mann Mutual Insurance Company 241 So.2d.588(1970).

> High School personnel should consider themselves in loco parentis to the student population as a whole. The welfare of the majority must be emphasized.

Principals as Extensions of Law Enforcement Agencies

One way for a public school principal to become legally entangled in a search or seizure case is to perform an action in school which can be interpreted as falling within the duties of the police or any other governmental, law enforcement agency. If a principal were acting as an extension of a law enforcement agency, he or she must abide by the same regulations as any legitimate officer of that agency. Therefore, since the legal limitations would be the same for a principal as they would be for a policeman, it would be wise for the principal to allow the police to do the searching and seizing if necessary. The police are specifically informed, trained, and paid for that type of work - an educator is not.

There might be occasions in a public school for a principal to become involved in a search or seizure. Such occasions might be handled without the principal becoming entangled with the police. In such situations, it might be said that the principal is not acting for, and with the advise of, or with the knowledge of the police.

An example of the above situation might be if a principal is given reliable information that a student has illegal items in his possession (such as drugs, weapons, etc.). In such a situation, the principal may initiate and participate in a search of that student and/or the student's locker without a search warrant or without arresting the student, because the principal is not acting with the knowledge or consent of a law enforcement agency.[75] One Court spoke specifically to the issue of private individuals participating in a search without police knowledge or consent. The court ruled that any evidence gained in such a search is admissible in a court of law because the Fourth Amendment to the Constitution protects individuals against searches by the state (police officials) but not by private individuals:

> Consequently, whenever evidence is seized by a private person, without the knowledge or participation of any governmental agency, it is admissable in a criminal prosecution.[76]

On the other hand, if the police had given the principal the information which prompted the principal's search, then it could be said that the principal was acting as an extension of the police. Therefore, the principal might need to be in possession of a search warrant or would need to arrest the student before a lawful search could be made.[77]

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[75] People v. Stewart 313 N.Y.S.2d.253(1970), Mercer v. State 450 S.W.2d.715(1970), and People v. Jackson 319 N.Y.S. 2d. 731(1971).

[76] People v. Stewart 313 N.Y.S.2d.253(1970).

It is of primary importance that a principal never act as an extension of a law enforcement agency. If the police have information concerning a student's possessions, let the police search the student. They are specifically informed, trained, and paid to do such duties - an educator is not.

The Searching of Students' Lockers and Desks

The issue concerning a principal's legal and constitutional right to search a student's locker and/or desk has been a source of major controversy during the last decade. From this controversy, two basic arguments have emerged. One school of thought suggests that the student's locker and desk, even though owned by the school and under the supervision of the principal, is constitutionally protected from unreasonably searches, because the locker is considered a public depository and, thereby, protected by the Fourth Amendment. Thus, since the Fourth Amendment requires a search warrant before an inspection of a public depository is made, the supporters of this notion believe that a search warrant should also be a prerequisite of a search of a student's locker or desk.

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[77] "Joint-venture" between police and a private citizen requires a legal search warrant as cited in Stapleton v. Superior Court of Los Angeles County 73 Cal.Rptr. 575(1969), p.578.

Cases of Consequence Regarding Search and Seizure in Schools

The most famous case concerning the search and seizure issue in schools is People v. Overton.[78] The facts behind this case are as follows:

Detectives, after having obtained a search warrant, came to Mt. Vernon High School and asked the assistant principal to call two students to the office. Carlos Overton was brought to the office and searched by the detectives. Nothing was found. The detectives then asked the assistant principal to open Overton's locker. The school administrator did so, and the detectives found four marijuana cigarettes. The student was then arrested.

In a New York District Court, the student defendant's attorneys moved to invalidate that portion of the search warrant which directed that his locker be searched on grounds of defective papers. The motion was granted, but the Court held that the evidence was still admissable because the assistant principal had consented to the search and had the right to do so.

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[78] 229 N.E.2d.596,20 N.Y.2d.360,cert.denied,(1967).

A New York Appelate Term reversed and dismissed the ruling. They stated that the assistant principal's consent could not justify an otherwise illegal search.

The State then appealed the case to the Court of Appeals of New York. This Court saw two distinct issues in the case. First, was the Fourth Amendment's restrictions applicable to school lockers; and second - does the school administrator have the right to search a locker? The Court reversed the lower Appelate Term's decision and in doing so, upheld the District Court. As such, they were convinced that school lockers are not protected by the Fourth Amendment and, therefore, no search warrant is required in order to inspect them. The Court also stated that a school administrator, with the knowledge and consent of the student (which the holding of the key or combination to the locker implies), and being ultimately responsibile for its contents, could search or inspect a locker without prior consent of the student.

The Court maintained that the assistant principal was acting in loco parentis, as is evident in the following quote:

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[79] Supra. note 78 at 598.

> The school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgement can often create hazards to each other. Parents, who surrender their children to this type of environment, in order that they many continue developing both intellectually and socially, have a right to expect certain safeguards.[80]

The Court in the Overton case upheld the right of a school administrator to search a student's locker without prior consent since the holding of the key or the combination to the locker establishes prior knowledge and consent of the student to such actions. It can therefore be said that a principal or vice principal is also entitled to access to the students' locker since he or she is ultimately responsible for its contents, as well as for the welfare of the other students in the school.

Another leading case regarding search and seizure is State of Kansas v. Stein.[81] It seems that Madison Stein robbed a music store one evening. The next day, police officers came to the school he was attending and asked to search his locker. The student consented to the search, but the school principal opened the locker for the police. A key was found in the locker which led to the evidence which convicted the student.

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[80] Supra. note 78.

[81] 456 P.2d.1,203 Kan.638,cert.denied,(1969).

The defendant student appealed the conviction claiming that he should have been given a "Miranda Warning" before his locker was searched, and that the principal had no right to open the locker for the police.

The Supreme Court of Kansas ruled that a "Miranda Warning" is not needed in search and seizure cases and that the principal does have the right to open and search a student's locker because the principal is responsible for its content as well as being responsible for the other students' welfare. The Court also stated that the status of a student's locker in the law is somewhat anomalous. Said the Court,

> Although a student may have control of his school locker as against fellow students, his possession is not exclusive against the school and its officials. A school does not supply its students with lockers for illicit use in harboring pilfered property or harmful substances. We deem it a proper function of school authorities to

> inspect the lockers under their control and to prevent their use in illicit ways or for illegal purposes. We believe this right of inspection is inherent in the authority vested in school administrators and that the same must be retained and exercised in the management of our schools if their educational functions are to be maintained and the welfare of the student bodies preserved.[82]

Thus, once again a court held that public school authorities do possess the right to search a student's locker (or desk) without prior consent. This authority is founded on *in loco parentis* and suggests that a school principal is ultimately responsible for the contents of the school lockers. Therefore, the principal must have access to lockers.

Searching a Student's Person: What Have the Courts Said?

The issue of searching the actual person of a student is one where principals might be subject to violating the law. The procedures of such searches are strict, and the pitfalls seem many.

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[82] *Supra*. note 81.

As discussed earlier, if at anytime the public school principal searches a student with either the knowledge or consent of a governmental law enforcement agency, the search is invalid unless the student was arrested prior to the search, or given a valid search warrant. Any evidence obtained in an illegal search cannot be admitted into a court of law.[83]

If the principal gets a reliable "tip" from an informer, he or she may proceed in searching the student without placing the student under arrest or obtaining a search warrant.[84] Once the information is made available to the appropriate school authority, the student may be searched.[85]

It has been suggested that the process of the search should be as follows. First, the student should be asked if he or she will consent to be searched. If the student consents, there are no legal problems. If the student does not give consent to be searched, but empties his or her pockets anyway, there still are no legal problems. However, if the student does not consent to search and refuses to be searched, the administrator has a problem. The problem is compounded by the fact that no court has spoken to the issue of a forced search of students.

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[83] Supra. note 69 and note 77.

[84] Supra. note 76.

[85] Supra. note 76.

There have been two major court cases dealing with the subject of personal searches in recent years. In Mercer v. State, a public high school principal received a "tip" that the Mercer student was in possession of marijuana.[86] The student was brought to the office and asked to empty his pockets. The student did so, but not without complaining. The principal discovered marijuana, called the police, and eventually the student was convicted of possession.

The defendant's attorney attempted to invalidate the evidence by claiming that the search was illegal. The Court ruled, however, that the principal had an in loco parentis right to require the student to empty his pockets. The Court also stated that the search was valid because the principal was not acting as an agent of a law enforcement agency.[87]

In another case, People v. Stewart, a dean of boys was told by a reliable student informant that William Stewart "had stuff on him".[88] The dean brought Stewart to his office and asked the student to empty his pockets. The boy agreed and fifteen packets containing a white substance thought to be narcotics were revealed. The administrator called the police who arrested Stewart.

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[86] 450 S.W.2d.715(1970).

[87] Supra. note 86 at page 717.

[88] 313 N.Y.S.2d.253(1970).

The defense council asked for a motion dismissing the charges. He claimed the search was illegal and the dean of boys was acting for the police.[89]

The Court ruled that the search was legal because the dean had reasonable suspicion ~~probable cause~~ to suspect that William Stewart was in possession of narcotics. Also, the Court held that the dean was not acting for the police, but rather he was acting in loco parentis for the remainder of the students in the school.[90]

One other case may shed some light on the issue of search and seizure. In 1971, a New York Court decided People v. Jackson.[91] In this case, a vice-principal in charge of discipline was given reason to believe that Jackson had illegal drugs in his possession. The vice-principal went to the classroom where the student was, and asked the student to follow him to the office. While walking up the hall, the vice-principal noticed that Jackson kept his right hand in a pants pocket where there was a large bulge. As the two were approaching the office, the student ran out of the school. The vice-principal caught the student three blocks from the school and, in pulling the student's hand out of his pocket, a syringe and other narcotic paraphenalia was revealed.[92]

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[89] Supra. note 88 at page 256.

[90] Supra. note 88 at page 257.

[91] 319 N.Y.S.2d.731(1971)

The Court ruled that the administrator had reasonable suspicion and probable cause to suspect the student of carrying illegal drugs. Also, the court believed that the search was legal and within the Constitutional guidelines of the Fourth and Fourteenth Amendments. The fact that the search took place off school property is irrelevant since it was the student who initiated the action of leaving the building in the first place.[93]

Summary

The cases presented and analyzed in this chapter reveal that the courts in this country have on several occasion, supported administrative searches of students' persons, their lockers, and their desks. The common basis of these decisions rests primarily on the following rationale. First, the principal of a public school receives authority through in loco parentis. This authority creates a prerogative to search a student or his locker when the administrator is protecting the health, welfare, and safety of the other students and teachers. Second, the public school administrator is ultimately responsible for the school and its contents.

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[92] Supra. note 91 at page 733.

[93] Supra. note 91 at pages 733-734.

Therefore, he or she must be in possession of the necessary prerogatives to inspect persons, lockers, and desks in the school. Third, when the administrator can show that he or she was given probable cause to suspect a student of concealing something illegal, and this probable cause is in no way connected with a governmental law enforcement agency, then a search is legal. In the eyes of the court, the administrator is simply acting as a private citizen and not a policeman.

There are no precedents, however, regaring the search of a resisting or non-complying student. The best policy in such a situation is to call the police and let them handle the case.

CHAPTER VI

THE CIVIL RIGHTS OF MARRIED AND/OR PREGNANT STUDENTS

The issues surrounding school discipline and control of married and/or pregnant students is one that public school administrators have had to face throughout the existence of our public school system. In the past ten years, however, the courts in this country have been very active in deciding cases on these issues. Recent decisions have brought about changes in court attitudes which public school principals may not be aware of. Therefore, principals might not know the legal limits which they are forced to contend with when dealing with a married and/or pregnant student.

Before viewing the specifics of some of the relevant cases concerning this issue, a look at some of the implications which married and/or pregnant students present would be in order. It has been said, that the presence of married students in public school tend to make some principals worry about "moral polution," and the consequences of married students discussing their martial (sexual) life with other students. As such, they are reluctant to allow married students to remain in school.[94]

Other administrators argue (and with convincing data) that teenage marriages have an extremely high divorce rate. Thus, they believe that by refusing to allow married students to attend school, they are discourging the students from marrying at such an early age.[95]

Some school officials, argue that unwed mothers or unwed pregnant girls are a source of embarrasment for the school, create moral polution, taint the education of other students. Therefore, say these administrators, such students should not be allowed to attend school.[96]

School boards have regulations permitting married and/or pregnant students to attend classes, but not to take part in any extra-curricular activities. The rational behind this is twofold. First, the authorities claim that extra-curricular activities are not a right of education and that students, upon getting married, forfeit the privilege of participating in extra-curricular activities. Second, many officials claim that marriage adds extra responsibility to a student, and by participating in extra-curricular activities, the student might be neglecting some vital marital responsibility.[97]

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[94] Alvin Independent School District v. Cooper 404 S.W. 2d.76(1966), Moran v. School District #7, Yellowstone County 350 F.Supp.1180(1972).

[95] Alvin Independent School District v. Cooper 404 S.W. 2d.76(1966), Anderson v. Canyon Independent School District 412 S.W.2d.387(1967), Davis v. Meek 344 F.Supp.298(1972).

[96] Ordway v. Hargraves 323 F.Supp.1155(1971), Perry v. Grenoda Municipal Separate School District 300 F. Supp. 748(1969).

Courts' Decisions Concerning the Rights of Married Students

Several state and federal courts have addressed themselves specifically to the issue of whether a married student has the right to attend a public school or not. Some of these cases are as follows.

In 1964, a Kentucky Court decided Board of Education of Harrodsburg v. Bentley.[98] In this case a female student who became legally married, challenged a school board regulation which required any married student to withdraw from school for a period of one year. It was specified that at the end of the one year, the student may re-enter as a special student, but will not be permitted to participate in any school related extra-curricular activity or social function.

At a hearing, the school board attempted to justify its regulation by stating that the purpose of such a regulation was to discourage the marriage of students. In its decision, the Court held that the regulation was invalid stating that a married student needs an education even more now than before since his or her future depends upon the skills which an education provides.[99]

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[97] Davis v. Meek 344 F.Supp.298(1972), Moran v. School District #7, Yellowstone County 350 F.Supp.1180(1972), Romans v. Crenshaw 354 F.Supp.969(1972).

[98] 383 S.W.2d.677(1964).

In 1966, a southwestern court was asked to rule on a school board policy prohibiting a married student from attending school. In Alvin Independent School District v. Cooper, a sixteen year old female student became legally married and withdrew from school to have a baby.[100] After the baby was born, the student was in the process of divorcing her husband while attempting to gain readmission to school. The local school board refused to re-admit her.

The Court held that so long as the student was within the proper legal age limits set up by the state constitution for receiving free public education, the school board could not adopt a policy excluding a student from school.

The Court then concluded,

> We are of the view that appellants
> were without legal authority to
> adopt the rule or policy that excludes

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[99] Supra. note 98 at page 680.

[100] 404 S.W.2d.76 (1966).

> the mother of a child from admission to the school if she is of age for which the State furnishes school funds.[101]

A similiar case was brought before a Texas Court in Anderson v. Canyon Independent School District.[102] In Anderson, a ninth grade female student got married and withdrew from Amarillo Junior High School, established residency in Canyon, Texas, and applied for admission into Canyon Junior High School. School officials refused to admit her because she was married, but did admit that she was eligible in all respects except for the fact that she was married. The Court, using Cooper as a precedent (cited earlier note 79), held that the school boards could not legally enforce a rule that conflicts with a higher state law.

In 1972, a fedsral district court decided Holt v. Shelton.[103] Nancy Kay Holt, a married senior, sought relief from a school rule requiring an automatic five day suspension for all married students. This procedure was followed by only granting the student the privilege of attending classes.[104] No extra-curricular activities were permitted.

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[101] Supra. note 100.

[102] 341 F.Supp.821(1972).

[103] 341 F.Supp.821(1972).

[104] Supra. note 103.

The Court ruled for the student saying that the Tennessee law was made to punish marriage-which is a legal and fundamental constitutional right. Said the court,

> More specifically, it now seems settled beyond peradventure that the right to marry is a fundamental one.
>
> . . . .
>
> Any such infringement (on a fundamental right) is constitutionally impermissible unless it is shown to be necessary to promote a compelling state interest.[105]

Carrollton - Farmers Branch Independent School District v. Knight is an almost identical case. In this case, the court ruled that as long as the students are legally married, a school has no right to restrict students' attendance because of their legal marriage.[106]

Extra-Curricular Activities and Married or Pregnant Students

As the above cases have shown, some schools and school boards have regulations which, while allowing married or pregnant students to attend school, do not permit them to participate in extra-curricular activities or school related social functions. This question has, however, come before the courts. Three United States District Courts have ruled on cases which were concerned with the legality of such actions.

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[105] Supra. note 103.

[106] 418 S.W.2d.535(1967).

In Moran v. School District #7 Yellowstone County, the court was asked to rule on three issues.[107] First, the due process of suspensions. Second, whether extra-curricular activities are considered to be an integral part of the curriculum.[108] Third, if students' marital status affects their eligibility in participating in extra-curricular activities and if such activities "generally recognized as a fundamental ingredient of the educational process"[109]

In Davis v. Meek, a court was asked to rule on a school board regulation which prohibited a student's participation in any extra-curricular activity if[110]

1) the student contributed to the pregnancy of any girl out of wedlock.

2) the student was an unmarried pregnant girl, and

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[107] 350 F.Supp.1180(1972) previously cited in note 65.

[108] This case was discussed in the Suspension and Expulsion Chapter, see pages 45-46.

[109] Supra. note 84. The Court was quoting Kelley v. Metropolitan County Board of Education of Nashville 293 F. Supp.485,493(D.C.1968), see page 46 and note 65.

[110] 344 F.Supp.298(1972).

> 3) the student was married (regardless of the reasons for the marriage).

According to the Court, the regulation was void because the student who brought the suit "had attained a status where his marital privacy might not be invaded by the state".[111] The Court followed the trend set by Moran (Supra.note 107) saying:

> It is conceded, however, that extracurricular activities are, in the best modern thinking, an integral and complementary part of the total school program.[112]

Therefore, since the extra-curricular program cannot be segregated from the total educational program, the Court concluded that a school board may not restrict a student's activities because of his or her marital status.[113]

A similiar case Romans v. Crenshaw, was decided by a district court.[114] In this case, a sixteen year old girl was married for ten months, and in the process of obtaining a divorce when the school principal refused to allow her to participate in the extra-curricular activity program. The Court ruled in favor for the student saying that extra-curricular activities cannot be disassociated from the regular school program and that school officials do not have the right to restrict a student, regardless of martial status, from participating in the school program. Said the Court,

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[111] Supra. note 110.

[112] Supra. note 110.

[113] Supra. note 110 at page 302.

[114] 354 F.Supp.868(1972).

> Any and all extra-curricular activities cannot rationally or legally be disassociated from school courses proper where they do or may form an element in future collegiate eligibility or honors as here. Such a practice is not only discriminatory on its face but is fundamentally inconsistent with the state's promise of a public education for its youth upon an equal basis.[115]

Unwed Mothers and Pregnant Girls

The issue of allowing either unwed mothers, or preganant unmarried girls to attend public schools is another concern of public school boards and principals. Two major cases of concern have reached the federal courts for rulings concerning this issue.

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[115] Supra. note 114.

In 1969, a Federal District Court in Mississippi decided Perry v. Grenoda Municipal Seperate School District.[116] In this case, two unwed mothers filed a class action suit against the school board charging invidious discrimination which violates the Equal Protection Clause of the Fourteenth Amendment, because of a policy forbidding unwed mothers to attend school.

The District Court ruled that the school must supply a hearing before any student is refused an education. In the Court's view,

> The continued exclusion of a girl without a hearing or some other opportunity to demonstrate her qualification for readmission serves no useful purpose and works an obvious hardship on the individual. It is arbitrary in that the individual is forever barred from seeking a high school education. Without a high school education, the individual is ill equipped for life, and is prevented from seeking higher education.[117]

The fact that the two girls were unwed mothers is inmaterial in such a hearing, said the court, unless the school can prove that they are "lacking in moral character". In conclusion the court held

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[116] 300 F.Supp.748(1969)

[117] Supra. note 116.

> . . . . that plaintiffs may not be excluded from the schools of the district for the sole reason that they are unwed mothers; and that plaintiffs are entitled to readmission unless on a fair hearing before the school authorities they are found to be so lacking in moral character that their presence in the schools will taint the education of other students.[118]

Therefore, the girls won the right to attend school.

In 1971, a United States District Court in Massachusetts was faced with a similiar case. In Ordway v. Hargraves, Fay Ordway was excluded from attending school or using school facilities during regular school hours because she was unwed and pregnant.[119] The principal of her high school set the following conditions for Fay:

1) she would not be permitted to attend school.
2) she could use school facilities (guidance, etc.) but only after regular school hours.
3) she will be allowed to attend all school functions.

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[118] Supra. note 116.

[119] 323 F.Supp.1155(1971).

4) she will be allowed to participate in field trips, etc..

5) she may seek extra help from teachers.

6) tutoring will be provided at no extra cost.

7) her name will remain on the school role.

8) she must take and pass examinations for her courses in order to receive credit for such courses.

The District Court concluded that 1) if Fay were married, she would be permitted to attend school; 2) several doctors and psychiatrists testified that there were no medical reason why she should not attend school, but there were several psycological reasons why she should attend school· and 3) the education that she would have received from the tutors would not be equal to that of her classmates attending school. Therefore, the Court said, she must be allowed to attend school.[120]

In 1973, a Federal District Court for the Northern District of Georgia ruled in Houston v. Prosser.[121] In this case, an unmarried female student became pregnant and withdrew from Decatur High School. After having the baby, she applied for readmission but was refused because of her parental status. She was told that she could attend night school but would have to pay tuition and book fees.

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[120] Supra. note 119 at page 1158.

[121] 361 F.Supp.295(1973).

The Court ruled the regulation permitting her to attend only night school unconstitutional because the student was not receiving equal protection under the law since she would have to pay tuition and book fees.[122]

Summary

The court cases reviewed in this chapter show that the courts have been clear and consistant on the issue of married and pregnant students. The Courts have held that school authorities may not prohibit students from attending public school if they are legally married and within the age limits set up by the appropriate state constitution for public school attendance. Courts have held, however, that extra-curricular activities are an integral part of the school's educational program, and pregnant or married students may not be excluded from such activities. Courts have held that unwed mothers or unwed pregnant girls may not be prohibited from attending school unless the school can prove that their presence would morally corrupt the rest of the students.[123]

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[122] The Court, however, rejected the argument that education was a fundamental right. This author choses not to comment on whether or not this may be the start of a new trend.

[123] *Supra*. note 116.

CHAPTER VII

CONCLUSION

The purpose of this study was to determine the legal prerogatives of public school principals in matters regarding student discipline and student control. As the culmination of this study, it is this writer's intention to summarize the major legal principles revealed in the cases analyzed and to offer public school principals guidelines of action for implementation when they are faced with specific problems of student control.

The primary method used to accomplish this objective was by locating and analyzing the major decisions from various state and federal courts concerning the constitutionality of student acts and of subsequent school control practices. Pertinent cases were located through the West digest system, and were read in specific National and Federal Registers in Law School Library, at the University of Richmond.

First Amendment Rights and Student Expression

The Tinker decision (United States Supreme Court, 1969), was a milestone in securing First Amendment right for students enrolled in public schools. In this case, our nation's highest court stated that a public school principal cannot restrict a student's freedom of speech or expression unless he or she prove, in a court of law, that the student's expression would "materially and substantially interfere with the requirements of discipline in the operation of the school".

Court cases subsequent to Tinker, have established many permissible modes of student expression. Pins, buttons, and armbands are considered to be items of student expression. Therefore, such articles are protected by the First Amendment as made applicable to the states by the Fourteenth Amendment. These courts have held that it is the prerogative of public school principals to prohibit the wearing of pins, buttons, and armbands by students, when they can demonstrate that such articles present a real and imminent danger of school disruption.

Newspapers, school related and non-school related, as well as pamphlets are also constitutional means by which students can express themselves. The courts have ruled, that principals may not censor these documents regardless of the unpopularity of the contents. The public school principal may, however, set up a screening procedure as outlined in Eisner v. Stamford Board of Education. In this procedure, the principal must be able to prove that

1) the purpose of the screening is to prevent disruption and not to stifle expression,

2) the screening is a formal procedure with a fixed deadline,

3) any censorship resulting from the screening is based on previously written requirements of what and how much disruption is to be expected if the censorship had not taken place, and

4) disruption would have occurred if the censorship had not taken place.

Students also possess the right to distribute non-school related newspapers and pamphlets so long as the process of distribution does not disrupt the school.

Relative to the notion of "free expression," the courts have held that a principal may not infringe upon students' rights solely because of a disruptive reaction of other students. Courts have consistently said that the teaching of tolerance of opposing views is more helpful than the prohibition of those views.

Dress and Hair Style Codes

After the United States Supreme Court, in Tinker, had guaranteed students the right of expression, individual United States Circuit Courts of Appeals were presented with several legal problems eminating from the public schools. One such problem was whether or not a student's dress and/or hair style was considered a means of expression. As revealed in this study, the judgments handed down by these Circuit

Courts of Appeals are far from being consistent or uniform.

Principals whose schools are located in the jurisdictional boundries of the First, Fourth, Seventh, and Eighth Circuit Court of Appeals should realize that dress codes and hair style codes were ruled illegal and unconstitutional in these areas.

Principals of schools located in the boundaries of the Fifth, Sixth, and Ninth Circuit Courts of Appeals may have rules which regulate students' dress and hair styles.

The principals of schools in the Second, Third, and Tenth Circuits of the United States Courts of Appeals have no consistent rulings on which to base their regulations concerning dress or hair style codes. However, the doctrines of the Tinker decision still apply in these areas.

Suspensions and Expulsions

With the recent Supreme Court decision in Goss v. Lopez, the entire issue of short term suspensions (less than ten days) has been crystalized. According to the Supreme Court, before a student is to be suspended for a period of less than ten days, the disciplining administrator must

1) inform the student (either orally or in writing) what rule or regulation he or she is accused of violating.

2) inform the student of the evidence which has been gathered to substantiate the charge.

3) allow the student to tell his or her side of the story.

4) investigate the facts more fully if there is a substantial discrepancy between the student's version and the accuser's.

The only exception to the above procedure is if a student's presence would endanger the rest of the student body, then the student can be suspended with a hearing to be scheduled as soon after as possible. The high Court also stated (in Goss v. Lopez) that students do not have a constitutional right to have an attorney present at such a hearing unless there are unusual circumstances.

A suspension of ten days or longer requires a more formal procedure. Said procedures should include the following:

1) written notice of the charges and evidence should be given to the student and parent,

2) a formal hearing should be scheduled with a proper amount of time to allow the student to prepare a defense,

3) at the hearing, the student should be allowed to be represented by legal council, be able to confront his or

her accusers, and be permitted to present a defense, and

4) the decision of the hearing should be based solely on the facts presented at the hearing.

School principals should keep in mind that expulsion procedures, while being more formal and rigid (because of the severity of the action), are usually prescribed by the local school board or the state board of education. Therefore, the public school principal is much less apt to go astray when dealing with the specific issue of procedural due process.

The cases analyzed reveal that public school principals must follow the same procedures when suspending a student from an extra-curricular activity. Significantly, most courts included in this thesis agree that extra-curricular activities are an integral part of the educational program of a public school.

Searches and Seizures

The first guideline of action in search and seizure of public school students or their lockers is as follows. If the principal acts with the knowledge or consent of a law enforcement agency, the courts will consider that the principal is acting as an agent of that agency. Therefore, it is wise for that principal, in that situation, to abide by all the legal procedures prescribed for other agents of that law enforcement agency.

When a public school principal acts without the knowledge or consent of a law enforcement agency, he or she may search a student's person without placing the student under arrest and without obtaining a search warrant prior to the search. However the principal must be able to establish probable cause for that search. It can be concluded that a public school principal does have the legal right to search a student's locker or desk without prior consent or a search warrant. This prerogative is rooted in the presence of in loco parentis, and by the fact that courts of law see the principal as responsible for the contents of the school building, as well as for the safety and welfare of all who inhabit the building.

Married and/or Pregnant Students

This study reveals that married students have a constitutional right to an education (which includes extracurricular activities) which cannot be taken away without establishing proper cause. According to the Courts, a principal cannot remove a married student from a public school if that student, male or female, unless that student's marriage violates state law.

Pregnant students, whether married or unmarried, also have a legal right to an education (which includes extra-curricular activities). Therefore, unless school authorities can prove (beyond a doubt) that such students are "so lacking in moral character that their presence in the schools will taint the education of other students," they may not be prohibited from attending school, nor from participating in school activities.

Summary Opinion

It is this author's opinion based upon the cases analyzed in this study, that administrators in the public schools of the nation must respect the civil rights of all students. It is clear that courts will treat any infringement of these rights as *illegal* and *unconstitutional*, unless a compelling state reason can be clearly established. It will be well for all school principals to recall Mr. Justice Fortas in *Tinker*, when he said that "Students in school as well as out of school are 'persons' under our Constitution." Administrators of the public schools owe their students the respect of being considered a human being. Respect of human beings also involves respect of human beings' civil rights as well. Students are citizens of the United States and are protected by the same Constitution and laws as adults are.

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APPENDIX A

THE TINKER DECISION

SUPREME COURT OF THE UNITED STATES

No. 21 - October Term, 1968

TINKER v. DES MOINES INDEPENDENT COMMUNITY

SCHOOL DISTRICT 393 U.S. 503

(February 24, 1969)

Mr. Justice Fortas delivered the opinion of the Court. Petitioner John F. Tinker, 15 year old, and petitioner Christopher Eckhardt, 16 year old, attended high school in Des Moines. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines, Iowa, held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired - that is, until after New Year's Day.

This complaint was filed in the United States District Court by petitioners, through their fathers, under Article 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the defendant school officials and the defendant members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline.

258 F.Supp.971(1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that prohibition of the wearing of symbols like the armbands cannot be sustained unless it "materially and substantially interfere(s) with the requirements of appropriate discipline in the operation of the school. "Burnside v. Byars, 363 F.2d.744,749(1966)."

On appeal, the Court of Appeals for the Eighth Circuit considered the case "en banc." The court was equally divided, the the District Court's decision was accordingly affirmed, without opinion. 383 F.2d.988(1967). We granted certiorari. 390 U.S.942(1968).

I

The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. See West Virginia v. Barnette, 319 U.S. 624(1943); Stromberg v. California, 283 U.S.359(1931). Cf. Thornhill v. Alabama, 310 U.S.88(1940); Edwards v. South Carolina, 372 U.S.229(1963); Brown v. Louisiana, 383 U.S.131(1966). As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment. Compare Cox v. Louisiana, 379 U.S.536,555(1965); Adderley v. Florida, 385 U.S.39(1966).

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years. In Meyer v. Nebraska, 262 U.S.390(1923), and Bartels v. Iowa, 262 U.S.404(1923), this Court, in opinions by Mr. Justice Mc Reynolds, held that the Due Process Clause of the Fourteenth Amendment prevents States from forbidding the teaching of a foreign language to young students. Statutes to this effect, the Court held, unconstitutionally interfere with the liberty of teacher, student, and parent. See also Pierce v. Society of Sisters, 268 U.S.510(1925); West Virginia v. Barnette, 319 U.S.624(1943)· McCollum v. Board of Education, 333 U.S.203(1948)· Wieman v. Updegraff, 344 U.S.183,195(1952) (concurring opinion); Sweezy v. New Hampshire, 354 U.S.234(1957); Shelton v. Tucker, 364 U.S. 479,487(1960); Engel v. Vitale, 370 U.S.421(1962); Keyishian v. Board of Regents, 385 U.S.589,603(1967); Epperson v. Arkansas, 393 U.S.97(1968).

In West Virginia v. Barnette, supra, this Court held that under the First Amendment, the student in public school may not be compelled to salute the flag. Speaking through Mr. Justice Jackson, the Court said:

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all its creatures - Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. 319 U.S., at 637.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school authorities, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools. See Epperson v. Arkansas, supra, at 104; Meyer v. Nebraska, supra, at 402. Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II

The problem presented by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style or deportment. Compare Ferrell v. Dallas Independent School District, 392 F.2d.697(1968); Pugsley v. Sellmeyer, 158 Ark.247,250 S.W.538(1923). It does not concern agressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive, expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the school's work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the school or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk. *Terminiello v. Chicago*, 337 U.S.1(1959); and our history says that it is this sort of hazardous freedom - this kind of openness - that is the basis of our National strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that the exercise of the forbidden right would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained. Burnside v. Byars, supra, at 749.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students. Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.

On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam. It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded.)

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol - black armbands worn to exhibit opposition to this Nation's involvement in Vietnam - was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. As Judge Gewin, speaking for the Fifth Circuit said, school officials cannot suppress "expression of feelings with which they do not wish to contend." Burnside v. Byars, supra at 749.

In Meyer v. Nebraska, supra, at 402, Justice McReynolds expressed this Nation's repudiation of the principle that a State might so conduct its schools as to "foster a homogeneous people." He said:

> In order to submerge the individual and develop ideal citizens, Sparta assembled the males at seven into barracks and intrusted their subsequent education and training to official guardians. Although such measures have been deliberately approved by men of great genius, their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest; and it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both letter and spirit of the Constitution.

This principle has been repeated by this Court on numerous occasions during the intervening years. In Keyishian v. Board of Regents, 385 U.S.589,603, Mr. Justice Brennan, speaking for the Court, said:

> The vigilant protection of constitutional freedom is nowhere more vital than in the community of American schools. Shelton v. Tucker, 234 U.S.479,487. The classroom is peculiarly the "market-place of ideas." The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multitude of tongues, (rather) than through any kind of authoritative selection"...

The principle of these cases is not confined to the supervised and ordained discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school. It is also an important part of the educational process. A student's rights therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so "without materially and substantially interfering with appropriate discipline in the operation of the school" and without colliding with the rights of others. Burnside v. Byars, supra, at 749. But conduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of other is, of course, not immunized by the constitutional guarantee of freedom of speech. Cf. Blackwell v. Issaquena City Board of Education 303 F.2d.749(C.A.5th.Cir.1966).

Under our Constitution, free speech is not a right that is given only to be circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.

If a regulation was adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student of opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional right of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school. Cf. Hammond v. South Carolina State College, 272 F.Supp.947 (D.C.D.S.C.1967)(orderly protest meeting on state college campus); Dickey v. Alabama State Board, 273 F.Supp.613 (D.C.M.D.Ala.1967)(explusion of student editor of college newspaper). In the circumstances of the present case, the prohibition of the silent, passive "witness of the armbands," as one of the children called it, is no less offensive to the Constitution's guarantees.

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and by their example, to influence others to adopt them They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the class rooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

APPENDIX B

THE LOPEZ DECISION

SUPREME COURT OF THE UNITED STATES
No. 73-898 Fall Term, 1974
NORVAL GOSS ET. AL., v. EILEEN LOPEZ ET. AL.
419 S.Ct.565 (1975)
(January 22, 1975)

January 22, 1975 Mr. Justice White delivered the opinion of the Court. This appeal by various administrators of the Columbus, Ohio Public School System ("CPSS") challenges the judgment of a three-judge federal court, declaring that appellees various high school students in the CPSS were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high schools without a hearing either prior to suspension or within a reasonable time, thereafter, and enjoining the administrators to remove all references to such suspensions from the students' records.

I

Ohio law, Rev. Code Section 3313.64, provides for free education to all children between the ages of six and twenty-one. Section 3313.66 of the Code empowers the principal of an Ohio public school to suspend a pupil for misconduct for up to ten days or to expel him. In either case, he must notify the student's parents within twenty-four hours and state the reasons for his action. A pupil who is expelled, or his parents, may appeal the decision to the Board of Education and in connection therewith shall be permitted to be heard at the board meeting. The board may reinstate the pupil following the hearing. No similar procedure is provided in Section 3313.66 or any other provision of state law for a suspended student. Aside from a regulation tracking the statute, at the time of the imposition of the suspensions in this case the CPSS had not itself issued any written procedure applicable to suspensions. Nor, so far as the record reflects, had any of the individual high schools involved in this case. Each however, had formally or informally described the conduct for which suspension could be imposed.

The nine named appelees, each of whom alleged that he or she had been suspended from public high school in Columbus for up to ten days without a hearing pursuant to Section 3313.66, filed an action against the Columbus Board of Education and various administrators of the CPSS under 42 U.S.C. Section 1983. The complaint sought a declaration that Section 3313.66 was unconstitutional in that it permitted public school administrators to deprive plaintiffs of their rights to an education without a hearing of any kind, in violation of the procedural due process component of the Fourteenth Amendment. It also sought to enjoin the public school officials from issuing future suspensions pursuant to Section 3313.66 and to require them to remove references to the past suspensions from the records of the students in question.

The proof below established that the suspensions in question arose out of a period of widespread student unrest in the CPSS during February and March of 1971. Six of the named plaintiffs, Rudolph Sutton, Tyrone Washington, Susan Cooper, Deborah Fox, Clarence Fyars and Bruce Harris, were students at the Marion-Franklin High School and were each suspended for ten days on account of disruptive or disobedient conduct committed in the presence of the school administrator who ordered the suspension. One of these, Tyrone Washington, was among a group of students demonstrating in the school auditorium while a class was being conducted there. He was ordered by the school principal to leave, refused to do so and was suspended. Rudolph Sutton, in the presence of the principal, physically attacked a police officer who was attempting to remove Tyrone Washington from the auditorium. He was immediately suspended. The other four Marion-Franklin students were suspended for similar conduct. None was given a hearing to determine the operative facts underlying the suspension, but each, together with his or her parents, was offered the opportunity to attend a conference, subsequent to the effective date of the suspension, to discuss the student's future.

Two named plaintiffs, Dwight Lopez and Betty Crome, were students at the Central High School and McGuffey Junior High School, respectively. The former was suspended in connection with a disturbance in the lunchroom which involved some physical damage to school property. Lopez testified that at least seventy five other students were suspended from his school on the same day. He also testified below that he was not a party to the destructive conduct but was instead an innocent bystander. Because no one from the school testified with regard to this incident, there is no evidence in the record indicating the official basis for concluding otherwise. Lopez never had a hearing.

Betty Crome was present at a demonstration at a high school different from the one she was attending. There she was arrested together with others, taken to the police station, and released without being formally charged. Before she went to school on the following day, she was notified that she had been suspended for a ten day period. Because no one from the school testified with respect to this incident, the record does not disclose how the McGuffey Junior High School principal went about making the decision to suspend Betty Crome nor does it disclose on what information the decision was based. It is clear from the record that no hearing was ever held.

There was no testimony with respect to the suspension of the ninth named plaintiff, Carl Smith. The school files were also silent as to his suspension, although as to some, but not all, of the other named plaintiffs the files contained either direct references to their suspensions or copies of letters sent to their parents advising them of the suspension.

On the basis of this evidence, the three-judge court declared that plaintiffs were denied due process of law because they were "suspended without hearing prior to suspension or within a reasonable time thereafter," and that Section 3316.66 Ohio Rev. Code and regulations issued pursuant thereto were unconstitutional in permitting such suspensions. It was ordered that all references to plaintiffs' suspensions be removed from school files.

Although not imposing upon the Ohio school administrators any particular disciplinary procedures and leaving them "free to adopt regulations providing for fair procedures which are consonant with the educational goals of their schools and reflective of the characteristics of their school and locality," the District Court declared that there were "minimum requirements of notice and hearing prior to suspension, except in emergency situations." In explication, the court stated that relevant case authority would: (1) permit "immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers or school officials, or damages property"; (2) require notice of suspension proceedings to be sent to the students' parents within 24 hours of the decision to conduct them; and (3) require a hearing to be held, with the student present, within seventy-two hours of his removal. Finally, the court stated that, with respect to the nature of the hearing, the relevant cases required that statements in support of the charge be produced, that the student and others be permitted to make statements in defense or mitigation, and that the school need not permit attendance by counsel.

The defendant school administrators have appealed the three-judge court's decision. Because the order below granted plaintiffs' request for an injunction-ordering defendants to expunge their records-this Court has jurisdiction of the appeal pursuant to 28 U.S.C. Section 1253. We affirm.

II

At the outset, appellants contend that because there is no constitutional right to an education at public expense, the Due Process Clause does not protect against expulsions from the public school system. This position misconceives the nature of the issue and is refuted by prior decisions. The Fourteenth Amendment forbids the State to deprive any person of life, liberty or property without due process of law. Protected interest in property are normally "not created by the Constitution. Rather, they are created and their dimensions are defined" by an independent source such as state statutes or rules entitling the citizen to certain benefits. Board of Regents v. Roth, 408 U.S.564,577(1972).

Accordingly, a state employee who under state law, or rules promulgated by state officials, has a legitimate claim of entitlement to continued employment absent sufficient cause for discharge may demand the procedural protections of due process. Connell v.

Higgndotham, 403 U.S.207 (1971); Weiman v. Updegraff, 344 U.S. 183,191-192 (1952); Arnett v. Kennedy, 416 U.S.134(1974)164 (Powell, J., concurring); 171 (White J., concurring and dissenting). So may welfare recipients who have statutory rights to welfare as long as they maintain the specified qualifications. Goldberg v. Kelly, 397 U.S.254(1970). Morrissey v. Brewer, 408 U.S.471(1972), applied the limitations to the Due Process Clause to governmental decisions to revoke parole, although a parolee has no constitutional right to that status. In like vein was Wolff v. McDonald, 418 U.S.539(1974), where the procedural protections of the Due Process Clause were triggered by officials cancellation of a prisoner's good-time credits accumulated under state law, although those benefits were not mandated by the Constitution.

Here, on the basis of state law, appellees plainly had legitimate claims of entitlement to a public education. Ohio Rev. Code Sections 3313.48 and 3313.64 direct local authorities to provide a free education to all residents between six and twenty-one years of age and a compulsory attendance law requires attendance for a school year of not less than thirty-two weeks. Ohio Rev. Code Section 3321.04. It is true that Section 3313.66 of the code permits school principals to suspend students for up to two weeks; but suspensions may not be imposed without any grounds whatsoever. All of the schools had their own rules specifying the grounds for expulsion or suspension. Having chosen to extend the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct absent fundamentally fair procedures to determine whether the misconduct has occurred. Arnett v. Kennedy, supra, at 164 (Powell, J., concurring); 171 (White J., concurring and dissenting); 206 (Marshall, J., dissenting).

Although Ohio may not be constitutionally obligated to establish and maintain a public school system, it has nevertheless done so and has required its children to attend. Those young people do not "shed their constitutional rights" at the schoolhouse door. Tinker v. Des Moines Community School District, 393 U.S. 503,506(1969). "The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures...Boards of Education not excepted." West Virginia v. Barnette, 319 U.S.624,637(1943). The authority possessed by the State to prescribe and enforce standards of conduct in its schools, although concededly very broad, must be exercised consistently with constitutional safeguards. Among other things, the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that clause.

The Due Process Clause also forbids arbitrary deprivations of liberty. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the minimal requirements of the clause must be satisfied.

Wisconsin v. Constantineau, 400 U.S.433,437(1971); Board of Regents v. Roth, supra, at 573. School authorities here suspended appellees from school for periods of up to ten days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.

Appellants proceed to argue that even if there is a right to a public education protected by the Due Process Clause generally, the clause comes into play only when the State subjects a student to a "severe detriment or grievous loss." The loss of ten days, it is said, is neither severe nor grievous and the Due Porcess Clause is therefore of no relevance. Appellee's argument is again refuted by our prior decisions; for in determining "whether due process requirements apply in the first place, we must look not to the weight but to the nature of the interest at stake." Board of Regents v. Roth, supra at 570-571. Appellees were excluded from school only temporarily, it is true, but the length and consequent severity of a deprivation, while another factor to weigh in determining the appropriate form of hearing, "is not decisive of the basic right" to a hearing of some kind. Fuentes v. Shevin, 407 U.S.67,86 (1972). The Court's view has been that as long as a property deprivation is not de minimis, its gravity is irrelevant to the question whether account must be taken of the Due Process Clause. Sniadach v. Family Finance Corp., 395 U.S. 337,342 (Harlan, J., concurring); Boddie v. Connecticut, 401 U.S.371, 378-379; Board of Regents v. Roth, supra, p.570 n.8. A ten day suspension from school is not de minimis in our view and may not be imposed in complete disregard of the Due Process Clause.

A short suspension is of course a far milder deprivation than expulsion. But, "education is perhaps the most important function of state and local governments." Brown v. Board of Education, 347 U.S.483,493(1954), and the total exclusion from the educational process for more than a trivial period, and certainly if the suspension is for ten days, is a serious event in the life of the suspended child. Neither the property interest in educational benefits temporarily denied nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary.

III

"Once it is determined that due process applies, the question remains what process is due." Morrissey v. Brewer, supra, at 481. We turn to that question, fully realizing as our cases regularly do that the interpretation and application of the Due Process Clause are intensely practical matters and that "the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria Workers v. McElroy, 367 U.S.886 895(1961). We are also mindful of our own admonition that

> "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint.... By and large, public education in our Nation is committed to the control of state and local authorities." Epperson v. Arkansas, 393 U.S.97,104.

There are certain bench marks to guide us, however, Mullane v. Central Hanover Trust Co., 339 U.S.306(1950), a case often invoked by later opinions said that "many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id., at

313. (The fundamental requisite of due process of law is the opportunity to be heard," Grannis v. Ordean, 234 U.S. 385,394(1914), a right that "has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to...contest." Mullane v. Central Hanover Trust Co., supra, at 314. Armstrong v. Manzo, 380 U S.545,550(1965); Anti-Fascist Committee v. McGrath, 341 U.S.123,168-169(1951)(Frankfurter, J., concurring). At the very minimum, therefore, students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing. "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v. Hale, 68 U.S. 223, 233(1863).

It also appears from our cases that the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interest involved. Cafeteria Workers v. McElroy, supra, at 895; Morrissey v. Brewer, supra, at 481. The student's interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences. The Due Process Clause will not shield him from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted. The concern would be mostly academic if the disciplinary process were a totally accurate, unerring process, never mistaken and never unfair. Unfortunately, that is not the case, and no one suggests that it is. Disciplinarians, although proceeding in utmost good faith, frequently act on the reports and advice of others; and the controlling facts and the nature of the conduct under challenge are often disputed. The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process.

The difficulty is that our schools are vast and complex. Some modicum of discipline and order is essential if the educational function is to be performed. Events calling for discipline are frequent occurrences and sometimes require immediate, effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device. The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his defalcation and to let him tell his side of the story in order to make sure that an injustice is not done. (Fairness can rarely be obtained by secret, one-sided determination of the facts decisive of rights... Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." Anti-Fascist Committee v. Mc Grath, supra, at 170,172(Frankfurter, J., concurring).

We do not believe that school authorities must be totally free from notice and hearing requirements if their schools are to operate with acceptable efficiency. Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of ten days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The clause requires at least these rudimentary precautions against unfair or mistaken findings or misconduct and arbitrary exclusion from school.

There need be no delay between the time "notice" is given and the time of the hearing. In the great majority of cases the disciplinarian may informally discuss the alleged misconduct with the student minutes after it has occurred. We hold only that, in being given an opportunity to explain his version of the facts at this discussion, the student first be told what he is accused of doing and what the basis of the accusation is. Lower courts which have addressed the question of the nature of the procedures required in short suspension cases have reached the same conclusion. Tate v. Board of Education, supra, at 979; Vail v. Board of Education, supra, at 603. Since the hearing may occur almost immediately following the misconduct, it follows that as a general rule notice and hearing should precede removal of the student from school. We agree with the District Court, however, that there are recurring situations in which prior notice and hearing cannot be insisted upon. Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable, as the District Court indicated.

In holding as we do, we do not believe that we have imposed procedures on school disciplinarians which are inappropriate in a classroom setting. Instead "we have imposed requirements which are, if anything, less than a fair-minded school principal would impose upon himself in order to avoid unfair suspensions." Indeed, according to the testimony of theprincipal of Marion-Franklin High School, that school had an informal procedure, remarkably similar to that which we now require, applicable to suspensions generally but which was not followed in this case. Similarly, according to the most recent memorandum applicable to the entire CPSS, see n. 1, supra, school principals in the CPSS are now required by local rule to provide at least as much as the constitutional minimum which we have described.

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge or to call his own witnesses to verify his version of the incident. Brief disciplinary suspensions are almost countless. To impose in each such case even truncated trial type procedures might well overwhelm administrative facilities in may places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.

On the other hand, requiring effective notice and informal hearing permitting the student to give his version of the events will provide a meaningful hedge against erroneous action. At least the disciplinarian will be alerted to the existence of disputes about facts and arguments about cause and effect. He may then determine himself to summon the accuser, permit cross-examination and allow the student to present his own witnesses. In more difficult cases, he may permit counsel. In any event, his discretion will be more informed and we think the risk of error substantially reduced.

Requiring that there be at least an informal give-and-take between student and disciplinarian, preferably prior to the suspension, will add little to the factfinding function where the disciplinarian has himself witnessed the conduct forming the basis for the charge. But things are not always as they seem to be, and the student will at least have the opportunity to characterize his conduct and put it in what he deems the proper context.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding ten days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. Nor do we put aside the possibility that in unusual situations, although involving only a short suspension, something more than the rudimentary procedures will be required.

IV

The District Court found each of the suspensions involved here to have occurred without a hearing, either before or after the suspension, and that each suspension was therefore invalid and the statute unconstitutional insofar as it permits such suspensions without notice or hearing. Accordingly, the judgment is

Affirmed.

APPENDIX C

GEOGRAPHICAL BOUNDARIES
OF
THE UNITED STATES
CIRCUIT COURTS OF APPEALS

The United States of America is a large country. Because of the vastness and diversity of our country, federal law (Judicial Act of 1789) set up the inferior courts of the federal judical system in three levels moving from bottom to top, level one the United States District Courts. Level two is the United States Circuit Court of Appeals, and at the top, level three is the United States Supreme Court.

At present, there are ninty-four Federal District Courts. Any case which involves federal statutory law or federal constitutional law must originate in one of these District Courts.

Once a decision is made at the District Court level, the case may be (and in many school cases-uaually is) appealed to the United States Circuit Courts. After the Circuit Court has decided, the case may again be appealed this time to the United States Supreme Court.

Since the Supreme Court rarely becomes involved in school related cases, most educational decisions are made at the Circuit Court level. Because of this, it is very important that every principal be aware of what circuit his school system resides in and how his or her local circuit court votes on educational cases.

The school principal should remember the interpretation of the laws regarding student control differs from one Circuit to another, because of the complexion of the different courts. What may be a legal act in one state may be totally illegal and unconstitutional in a neighboring state.

At present, there are eleven United States Circuit Courts of Appeals. The following is a list of those states which are in their respective circuits:

First Circuit Court

- Maine
- New Hampshire
- Massachusetts
- Rhode Island
- Puerto Rico

Second Circuit Court

- Vermont
- New York
- Connecticut

Third Circuit Court

- Pennsylvania
- New Jersey
- Delaware
- Virgin Islands

Fourth Circuit Court

- Maryland
- West Virginia
- Virginia
- North Carolina
- South Carolina

Fifth Circuit Court

- Florida
- Georgia
- Alabama
- Mississippi
- Louisiana
- Texas
- Canal Zone

Sixth Circuit Court

- Michigan
- Ohio
- Kentucky
- Tennessee

Seventh Circuit Court

- Wisconsin
- Illinois
- Indiana

Eight Circuit Court

- North Dakota
- South Dakota
- Nebraska
- Minnesota
- Iowa
- Missouri
- Arkansas

Ninth Circuit Court

- Alaska
- Guam
- Hawaii
- Washington (State)
- Oregon
- Idaho
- Montana
- California
- Nevada
- Arizona

Tenth Circuit Court

- Wyoming
- Utah
- Colorado
- Kansas
- New Mexico
- Oklahoma

Eleventh Circuit Court

- Washington, D.C.

It is imperative that public school principals identify which Circuit they reside in and maintain constant surveillance of the decision regarding education by the appropriate circuit court. Of course, there are those highly selective cases which travel directly from U.S. District Courts to the United States Supreme Court. Moreover, that any decision made by the Supreme Court becomes the law of the land and supercedes the decisions of all lower courts.